

**BOARD OF APPEALS CASE NO. 5211**

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**BEFORE THE**

**APPLICANTS: Church of Christ and  
Awakening Child Montessori**

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**ZONING HEARING EXAMINER**

**REQUEST: Amend Board of Appeals Case No.  
5118 to increase student enrollment to 52  
students per session; 2529 Conowingo Road,  
Bel Air**

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**OF HARFORD COUNTY**

**HEARING DATE: February 25, 2002**

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**Hearing Advertised**

**Aegis: 12/26/02 & 1/2/02**

**Record: 12/28/01 & 1/4/02**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicant, Church of Christ of Bel Air and Co-Applicant, Awakening Child Montessori, are requesting an amendment of Condition No. 2 to Board of Appeals Case No. 5118, to increase the number of students at a school located on the parcel from the allowed twenty-six (26) to fifty-two (52). The Applicant and Co-Applicant were granted approval for a special exception pursuant to Code Section 267-53C(7)(c) to operate a kindergarten and school in an AG/Agricultural District.

The subject property is located at 2529 Conowingo Road, Bel Air, Maryland 21015 and is more particularly identified on Tax Map 34, Grid 2D, Parcel 331. The parcel consists of 3± acres, is zoned AG/Agricultural and is entirely within the Third Election District.

Ms. Gaye Novak appeared and testified that she has operated a kindergarten and school on the subject site since approval was granted for her special exception use on May 16, 2001. The Montessori school was originally designed to accommodate 20 students with a ceiling of 26 students; however, the witness pointed out that demand has been steadily increasing and she averages two (2) calls per day for new placements. She currently has twenty-five (25) students enrolled for next year with fifteen (15) on the waiting list. Ms. Novak indicated that she would like to increase allowable enrollment from the current allowed level of 26 to 52. The witness explained that all 52 students are not present at the school at the same time. Three year-old children are present only 3-1/2 days per week.

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Assuming 52 children are allowed, there would be 26 children on site on Monday through Friday from 9:00 a.m. to 12:00 noon. On Monday, Wednesday and Friday, there are 12 afternoon students and on Tuesday and Thursday there are 11 afternoon students. School operates 170 days per year. Because of the staggered start times for students the greatest number of deliveries and pick-ups at school would be for the 9:00 a.m. and noon hours. Three additional employees would be needed to increase enrollment to 52. The witness did not believe any adverse impacts would result from the increase in student numbers.

Mr. Robert Kilbourn appeared as a member and deacon of the Church and testified that the congregation currently can seat 125 persons. In the past the church hosted a variety of activities including girl scouts, boy scouts, AA, aerobics, bible study and other activities. Parking will accommodate 30-40 cars. The witness admitted that if the school enrollment doubled, special event parking could be crowded but he felt that the increase could be accommodated.

Mr. Anthony McClune appeared and testified on behalf of the Department of Planning and Zoning. The Department supports the request to double enrollment and found no evidence that adverse impacts would result that are not generally associated with a 52 student school. Three conditions of approval were suggested by the Department: (1) obtain all permits and inspections; (2) No additional expansion above 52 be permitted; and (3) the requirements of the Health Department be met before permits could be issued. Mr. McClune pointed out the concerns of the Harford County Health Department (Attachment 10) as set forth in a letter to the Co-Applicant dated November 19, 2001. That letter points out the Health Department's concerns regarding limited septic system and marginal soil percolation. The Health Department requested additional "wet season" percolation testing be conducted and could not support the Application without the additional data.

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Ms. Edna Goldberg appeared in opposition to the request. Ms. Goldberg pointed out that this school operation began as a day care with 18 children and has grown to 26 with a request to further expand to 52. She is very concerned that the well water availability and septic system cannot accommodate further growth of this facility. The witness was particularly concerned with well water levels and pressure, particularly with the drought conditions the area has recently suffered. The witness testified that her water pressure had dropped but did not speculate as to the reason for that occurrence.

John Stone also appeared in opposition to the request. Mr. Stone has been an adjoining property owner for 33 years and is also concerned about the water and septic issues. According to the witness, drainage is downhill from the Church property to his land and any additional runoff of sewerage would be of concern. The witness also described traffic along Conowingo Road and described a hill that interrupts sight distance just beyond the entrance to the church/school property. He said traffic is heavy and ingress/egress is a dangerous proposition because of traffic volumes, speed and limited sight distance caused by the existing hill.

### **CONCLUSION:**

The Applicant, Church of Christ of Bel Air and Co-Applicant, Awakening Child Montessori, are requesting an amendment of Condition No. 2 to Board of Appeals Case No. 5118, to increase the number of students at a school located on the parcel from the allowed twenty-six (26) to fifty-two (52). The Applicant and Co-Applicant were granted approval for a special exception pursuant to Code Section 267-53C(7)(c) to operate a kindergarten and school in an AG/Agricultural District.

Although this is a request to modify a condition of approval imposed by a former grant of a special exception use (pursuant to Board of Appeals Case No. 5118), those rules and considerations applicable to special exceptions still apply to requests to alter conditions.

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Harford County Code Section 267-53C(7)(c) provides:

“All other educational institutions must comply with the following:

- [1] Where the maximum attendance at any one time does not exceed forty students, such institution must have:
  - [a] A parcel area of at least twenty thousand square feet per fifteen students or fraction thereof.
  - [b] A parcel frontage of at least one hundred fifty feet.
  - [c] A front yard depth of at least forty feet, a side yard depth equal to at least the height of the tallest institutional building located on the parcel which is proximate to the side yard and a rear yard depth of at least forty feet.”

Code Section 267-51 provides:

“Purpose.

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

Section 267-52 provides:

“General regulations.

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.

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- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”

The Maryland Courts have addressed the question of the grant of special exceptions in Maryland and has provided the following guidance:

“The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A2d 1319 (1981), wherein the Court said:

...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any facts or circumstances negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

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The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

In examining whether the proposed use, an increase of students from 26 to 52, the Hearing Examiner must necessarily take into consideration the provisions of Code Section 267-9I entitled, “Limitations, Guides and Standards”. While examination of those provisions in most cases yields little cause for concern, the concern regarding the adequacy of the septic capacity is one material area of potential impact that the Applicant has simply failed to address, relying instead on some future testing during the permit process to determine if this special exception should be allowed. Applying the test enunciated in Schultz, the Board is charged with determining if this use at this particular location has any impacts associated with it regardless of where it was located within the zone. The Department of Health has expressed some concern regarding the adequacy of the septic capacity and has withheld support for this request until wet season percolation tests can be conducted to determine if an increase in student enrollment can be accommodated.

In addition to concerns related to septic and soil percolation, the residents who appeared and testified raised legitimate concerns regarding well water capacity. The Applicant did not address the water capacity or the impact of doubling student enrollment on water usage and the potential impact on neighboring wells. These types of issues are always important to consider in such cases where water usage and discharge will necessarily result from any approval of the requested use, but given recent drought conditions in the region, the Hearing Examiner finds it even more compelling that this Applicant provide the necessary factual assurances that a doubling of student enrollment at this location will not have an adverse impact on water quality, quantity or availability.

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Regarding adequacy of the septic system and lack of soil percolation tests allowing the Health Department to support this request, and absent facts to support a conclusion that no adverse impact to area well water will result from an approval, it is the opinion of the Hearing Examiner that the Applicant has failed to meet the burden of proof required for of a modification of the special exception use that limits enrollment to 26 students.

Consequently, the Hearing Examiner recommends that this request be denied.

Date: MARCH 20, 2002

William F. Casey  
Zoning Hearing Examiner